

REMARKS

In the Office Action mailed April 7, 2003, the Examiner rejected claims 1, 3-5, 8, 9, 36, 37, 40 and 48-58. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

In response to the Examiner's objection, claim 3 has been amended to change dependency to claim 1.

Though Applicants disagree with the Examiner, Claim 51 has been canceled and claim 52 has been amended in response to the Section 112 rejection.

Applicants respectfully disagree with the Examiner's rejections under Section 103. In the interest of expediting prosecution, Applicants have made certain amendments to the independent claims to more fully clarify various of the claimed features. From the amendments, especially in view of arguments advanced previously and herein, the Examiner should readily be able to confirm the patentability of Applicants' claimed combinations as a whole.

With regard to claim 1, in addition to other distinguishing features discussed by Applicants previously, the claim recites that the dispensing system is automated.¹ This further distinguishes over the references of record, and particularly precludes reliance, inter alia, upon the Kraus patent to combine its teachings with the other patents. Specifically, Kraus requires a user to manually set switches in order to attain proper proportions of ingredients. This potentially renders the machine susceptible to operator error, as a result of inconsistent or improper settings. Additionally, it renders the system less interesting from a consumer point of view, as compared with the claimed invention, pursuant to which an input of a desired selection automatically triggers formulation settings and dispensing. In short, the Kraus patent does not teach or suggest a structure that affords full automatic operation in a user interactive custom cosmetic dispensing system. Thus, the Examiner cannot properly combine the cited references to arrive at the present claimed invention as a whole of claim 1 and its dependent claims.

¹ The Examiner's heavy reliance upon Hellenberg is believed also to be misplaced. In the absence of the Applicants' invention as road map, Hellenberg provides no teaching or suggestion that its device could be adapted for cosmetic dispensing particularly in accordance with the combination, as a whole, of Applicants' claimed invention.

With regard to claim 36, Applicants have clarified that effects ingredients are part of the individual ingredients containers. As such, the combination of the amended claim as a whole is believed to be patentable. See, Karsten Mfg. Corp. v. Cleveland Gulf Co., 58 U.S.P.Q.2d 1286, 1293 (Fed. Cir. 2001) ("In holding an invention obvious in view of a combination of references, there must be some suggestion, motivation, or teaching in the prior art that would have led a person of ordinary skill in the art to select the references and combine them in the way that would produce the claimed invention"); see also, In re Lee, 61 U.S.P.Q. 2d 1430 (Fed. Cir. 2002).

As to claim 48, Applicants have clarified that the ingredients containers are prepackaged in containers that have a removeable cap or lid. This affords the ability to readily replenish Applicants' supply of ingredients, and further appears to distinguish from Hellenberg, which appears to be silent as to how ingredients are replenished.²

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants intend to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there

² New claim 61 addresses an even more specific distinction where a receptacle, such as the disclosed receptacle, or removable cap or lid for an ingredients container can be employed to cover an ingredients container when not dispensing.

is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

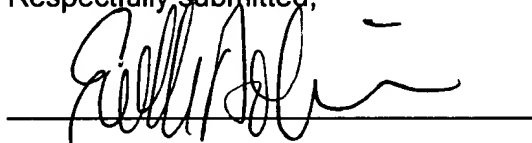
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 593-9900.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Dated: June 27, 2003

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Eric M. Dobrusin", is written over a horizontal line.

Eric M. Dobrusin
Registration No. 33,867
DOBRUSIN & THENNISCH PC
401 S. Old Woodward Ave., Ste. 311
Birmingham, MI 48009
(248) 593-9900

Customer No. 25215